(21)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

CORAM : HON'BLE SHRI S.R. NAYAK, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISC. APPEAL NO. 1022 OF 2006

Appellant (Applicant)	Smt. Neera Bai Yadav, W/o K.K. Yadav, Aged about 36 years, through Ramotin Bai, Near Verma's house, Bheema Nagar, Sikola, Durg (CG).
	Versus
Respondent (Non-Applicant)	K.K. Yadav, S/o Sri Dileshwar Yadav, Aged about 47 years, Near Trilochan Bal Mandir, Kelabadi, Durg, Tahsil and District Durg (CG).

Present :- Shri Abhay Kumar Tiwari, learned counsel for the appellant.

(ORAL ORDER)
(Passed on 29th November, 2006)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This appeal under Section 19 of the Family Courts Act, 1984 (for short "the Act, 1984") has been directed against the order passed by the Principal Judge, Family Court, Durg, on 18-09-2006 in Case No.81-A/2006 by which the application filed by appellant under Section 24 of the Hindu Marriage Act, 1955 (for short "the Act, 1955") for grant of maintenance *pendente lite* and expenses of proceedings has been rejected.

The appellant under Section 9 of the Act, 1955 instituted an application for restitution of conjugal rights against respondent, *inter alia*, pleading that she was married to respondent long back 18 – 19 years and since then she was living with him as his wife and out of their wedlock two children were born. On 15-04-2002 respondent ousted her from his

house, kept another woman and without any reason has deserted her. The respondent denied the claim and pleaded that appellant is not his legally married wife. Appellant was married at Kalabandha, Bhilai. She left her husband and by *Chudi* custom married to another person, thereafter she developed love affairs with the respondent and lived with him. She has developed illicit relation with one Satyendra Shrivastava. She willfully left his house on 19-04-2002 and was leading adulterous life since then with Satyendra Shrivastava. Appellant filed an application under Section 24 of the Act, 1955 for maintenance *pendente lite* and expenses of proceedings. The said application was opposed by the respondent.

Learned Court below held that without evidence it is difficult to adjudicate that appellant is legally wedded wife of respondent and is not leading adulterous life, therefore, taking into consideration that there is no possibility of delay in disposal of the *lis*, dismissed the interim application filed under Section 24 of the Act, 1955.

During arguments learned counsel for the appellant contended that learned Court below overlooked that appellant and respondent lived as husband and wife for a long time, therefore, they shall be treated as husband and wife in the eye of law. He further contended that appellant has no source of income; therefore, learned Court below erred by disallowing her maintenance *pendente lite* and expenses of proceedings.

It is not in dispute that respondent has challenged the relation of husband and wife and also challenged her fidelity, even alleged that she is leading adulators life. Section 24 of the Act, 1955 authorised the Court to allow maintenance *pendente lite* and expenses of proceedings to the wife or husband, as the case may be. Here in the instant case by specific

pleadings, with detailed particulars the relationship has been challenged, therefore, the Court below on the ground of disputed relationship, dispute regarding chastity, as well also taking into consideration that the case is likely to be decided shortly has refused grant of interim relief to the appellant. In our considered opinion the reasons assigned by the Court below for refusal to allow ad-interim relief are not erroneous.

No other points have been raised by the appellant in the course of arguments.

In the result, the appeal being devoid of merit is liable to be dismissed summarily and is accordingly dismissed *in limine*. No costs.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge

Gowri